

**BOARD OF APPEALS CASE NO. 5247**

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**BEFORE THE**

**APPLICANTS: Ralph Clay, Linda & Steve Ruth**

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**ZONING HEARING EXAMINER**

**REQUEST: Special Exception to store commercial vehicles and equipment and conduct construction service and suppliers use in the AG District;  
3346 Hughes Road, Darlington**

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**OF HARFORD COUNTY**

**HEARING DATE: June 3, 2002**

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**Hearing Advertised**

**Aegis: 4/3/02 & 4/10/02**

**Record: 4/5/02 & 4/12/02**

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## **ZONING HEARING EXAMINER'S DECISION**

The Applicants, Ralph M. Clay, Linda Ruth and Steve Ruth, are requesting special exceptions, pursuant to Sections 267-53D(1) and 267-53H(1) of the Harford County Code, to store commercial vehicles and equipment and to conduct construction service and suppliers use in an AG/Agricultural District.

The subject parcel is located at 3346 Hughes Road and is more particularly identified on Tax Map 16, Grid 4E, Parcel 150. The parcel consists of 11.71 acres, is zoned AG/Agricultural and is entirely within the Fifth Election District.

Mr. Steve Ruth appeared and testified that the subject property is owned by his father-in-law and co-applicant herein, Ralph Clay. Mr. Ruth lives next door with his wife and co-applicant, Linda Ruth. Mr. Ruth stated that he operates a lawn cutting and landscaping business from his home and stores the equipment on the subject parcel (Equipment List attached as Applicant's Exhibit 3). In addition to his wife and father-in-law, there are 4 employees of the business. They arrive around 7:30 a.m., pick up the equipment needed and depart the property returning around 5:30 p.m. each day to return the equipment. The Applicant also runs Christmas Décor from the site as a seasonal business engaged in decorating residences with holiday trim and lighting. This business operates from November 1 through February 1 and maintains even cash flow and enables him to keep his employees working during the winter months.

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The Applicant proposes to construct a 40 foot by 60 foot pole barn that will be used to store all of the equipment. Four smaller, existing structures will be removed. The trucks and wheeled equipment will be stored outside in a parking area that will be totally screened from the view of neighboring residences by the barn and existing tree cover. The parking area is accessed by a private road and is 500 feet off the road. The existing tree cover along the property line is mature forest and is 130 feet or more in width. The entire storage area is screened totally from view of any neighboring properties and the Applicant did not feel that any adverse impacts would result from his limited operation on such a large parcel. The Applicant pointed out that that his parcel is adjacent to the subject parcel and the two parcels together are over 13 acres in size. The outside storage area will be used for large trailers and trucks and bulk mulch.

Mr. Bruce Flaughner appeared and testified that he lives at 1707 Granite Drive, directly in front of the Applicant's property. Mr. Flaughner supports the Applicant's request and stated that the operation's location will be totally screened from view from his property. The witness stated that no detrimental impact would result from the Applicant's operation as described.

Mr. Gary Bator appeared and stated that he lived at 3350 Hughes Road, adjoining the subject parcel. Mr. Bator supports the Applicant's request and confirmed that the proposed operation is fully screened by mature forest that is nearly 150 feet thick and existing on the perimeter of the subject parcel.

Mr. Denis Sigler appeared on behalf of the Department of Planning and Zoning. The Department supports the request subject to a number of conditions to which the Applicant agreed. Mr. Sigler pointed out that this operation would be quite compatible with other AG zone uses particularly since the equipment, unlike farming equipment, leaves the property and is not running on the parcel throughout the day. Mr. Sigler agreed with the Applicant that full screening of the operation is provided by distance and dense forest.

No persons appeared in opposition to the request before the Hearing Examiner.

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### **CONCLUSION:**

The Applicants, Ralph M. Clay, Linda Ruth and Steve Ruth, are requesting special exceptions, pursuant to Sections 267-53D(1) and 267-53H(1) of the Harford County Code, to store commercial vehicles and equipment and to conduct construction service and suppliers use in an AG/Agricultural District.

Harford County Code Section 267-53D(1) provides:

“Motor vehicle and related services.

- (1) Commercial vehicle and equipment storage and farm vehicle and equipment sales and service. These uses may be granted in the AG District, and commercial vehicle and equipment storage may be granted in the VB District, provided that:
  - (a) The vehicles and equipment are stored entirely within an enclosed building or are fully screened from view of adjacent residential lots and public roads.
  - (b) The sales and service of construction and industrial equipment may be permitted as an accessory use incidental to the sales and service of farm vehicles and equipment.
  - (c) A minimum parcel area of two (2) acres shall be provided.”

Harford County Code Section 267-53H(1) provides:

“Services.

- (1) Construction services and suppliers. These uses may be granted in the AG and VB Districts, provided that a buffer yard ten feet wide shall be provided around all outside storage and parking areas when adjacent to a residential lot or visible from a public road.”

The Applicant can meet or exceed all of the specific requirements of the Harford County Code. Upon consideration of the “Limitations, Guides and Standards” set forth at Section 267-9I, the Hearing Examiner finds no particular adverse impacts associated with this operation different from or greater than any other similar operation in the AG zone.

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The standard to be applied in reviewing a request for special exception use was set forth by the Maryland Court of Appeals in Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981) wherein the Court said:

“...The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any facts or circumstances negating the presumption. The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

Whereas, the Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal. (Citations omitted). These standards dictate that if a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied.” (Emphasis in original).

The Court went on to establish the following guidelines with respect to the nature and degree of adverse effect which would justify denial of the special exception:

“Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” 291 Md. At 15, 432 A.2d at 1327.

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The Hearing Examiner concludes that this operation at this location will not have any adverse impacts above and beyond those inherently associated with such a special exception use regardless of its location within the Agricultural zone. Consequently, the Hearing Examiner recommends approval of the Applicant's request subject to the following conditions:

1. The Applicant shall obtain any and all necessary permits and inspections.
2. The Applicant shall retain as much tree cover as possible around the proposed pole barn.
3. This approval is for the Applicant only and may not be transferred to a new owner or business operator.
4. The Applicant shall submit a detailed site plan for review by the Development Advisory Committee (DAC).
5. Only minor service work shall be performed on the vehicles on-site.
6. Equipment shall be stored inside the building. Outside storage shall be limited to large trailers, trucks and bulk mulch.

Date: JUNE 26, 2002

William F. Casey  
Zoning Hearing Examiner